APPEAL NO. 042174
FILED OCTOBER 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). A contested case hearing was held on August 10, 2004. The hearing officer determined that the respondent (carrier) is relieved from liability under Section 409.002, because of the appellant's (claimant) failure to timely notify her employer pursuant to Section 409.001; the date of injury is _____; the claimant did not sustain a compensable repetitive trauma injury, but did sustain an aggravation injury to her cervical spine in the form of one or more herniated discs; and that, because the claimant did not sustain a compensable injury, there has been no disability. The claimant appeals, arguing that the hearing officer erred in his determinations on the compensability, timely notification, and disability issues. There is no response from the carrier in the file.

DECISION

Affirmed.

The claimant was employed as a pottery puller doing considerable work with her hands and arms removing items from shelves or stocking them on shelves. The claimant contends that (alleged date of injury), is the date that she knew or should have known that the injury may be related to her employment because that was the day she received MRI results showing a ruptured disc and was told by her doctor that the injury happened over a period of time due to the repetitive nature of her work. The claimant had gone to a hospital emergency room on _____, when she experienced a tingling and numbness sensation in her left arm as she was stocking some items. She was examined for a possible heart attack but that possibility was ruled out. She was released but returned to the emergency room on June 5, 2003, complaining of pain in her arm and shoulder. On June 9, 2003, the claimant consulted with Dr. A, who eventually referred her for an MRI. The claimant first told her employer of her claim on July 9, 2003. The hearing officer found that the date of injury was _____. He also found that her degenerative cervical disc disease was not caused by her employment. Instead, he found that the claimant had sustained additional damage to one or more cervical discs due to a specific injury while working on _____. The determination of the nature of the injury is a factual determination within the province of the hearing officer to resolve.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer's determination is supported by the evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Section 409.001(a)(2) provides, in relevant part, that an employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which (in cases of an occupational disease) the employee knew or should have known that the injury may be related to the employment. Failure to notify an employer as required by Section 409.001(a) relieves the employer and the carrier of liability, unless the employer or carrier has actual knowledge of the injury, good cause exists, or the claim is not contested. Section 409.002. Whether the claimant timely notified her employer of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 000150, decided March 10, 2000. The hearing officer found that the claimant first gave the employer notice of the injury on July 9, 2003. He further found that the claimant did not have good cause for not timely providing notice of her work-related injury. The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Since we affirmed the determinations that the claimant did not provide timely notice of her injury and that she did not sustain a compensable repetitive trauma injury, we also affirm the determinations that the carrier is relieved of liability under Section 409.002 and that there is no disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **UTICA MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

DAVE CUNNINGHAM, REGIONAL VICE PRESIDENT
2435 NORTH CENTRAL EXPRESSWAY, SUITE 400
DALLAS, TEXAS 75080.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Margaret L. Turner
Appeals Judge